

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

In the Matter of	)	
	)	
Rules and Regulations Implementing the	)	CG Docket No. 02-278
Telephone Consumer Protection Act of 1991	)	

**COMMENTS OF SBC COMMUNICATIONS, INC. IN RESPONSE TO PETITIONS FOR  
CLARIFICATION**

SBC Communications, Inc. (“SBC”) hereby submits these comments in response to petitions for reconsideration filed in the above captioned proceeding. SBC agrees with commenters that the Commission should reconsider the wireline-to-wireless number portability issue and give the industry time to develop a solution with respect to these numbers so that telemarketers using autodialers can comply fully with the Telephone Consumer Protection Act (“TCPA”). Further, the Commission should clarify the applicability of the five-year do-not-call (“DNC”) time limitation to DNC requests made prior to the effective date of the Commission’s *Telemarketing Order*.<sup>1</sup>

*Autodialed Calls to Wireless Numbers.* In its *Telemarketing Order*, the Commission affirmed that under the TCPA, telemarketers are prohibited from using autodialers to call wireless numbers. The Direct Marketing Association (“DMA”) asks the Commission to reconsider the applicability of this decision to wireless numbers and create a safe harbor for telemarketers that use reasonable methods to prevent calls to wireless numbers.<sup>2</sup> SBC agrees with DMA that liability issues surrounding telemarketing calls to wireless numbers must be addressed further by the Commission. As more and more consumers port wireline numbers to

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<sup>1</sup> Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, Report and Order, CG Docket No.02-278 (rel. July 3, 2003) (*Telemarketing Order*).

<sup>2</sup> DMA Petition for Reconsideration at 10-11.

wireless carriers, it will be vital for telemarketers that use autodialers to have an accurate method of determining which numbers are wireless for compliance with the TCPA prohibition.

In the *Telemarketing Order*, the Commission declined to mandate a specific solution to enable telemarketers to identify all wireless numbers, concluding that existing industry sources are sufficient to enable telemarketers to identify all wireless numbers. But even the Commission admits that there is no one database that telemarketers can use to identify *all* wireless numbers.<sup>3</sup> The DMA Wireless Suppression Service, for example, identifies blocks of numbers or area codes/exchanges which are assigned to cellular phones, but *not* wireline numbers ported to wireless that are not included in these blocks or area codes. Thus, telemarketers using autodialers who rely on this or the other databases cited by the Commission to identify wireless numbers would receive incomplete information.

To remedy this issue, the Commission must afford the industry time to develop a mechanism for quickly and accurately identifying *all* wireless numbers, including wireline numbers that have been ported to wireless.<sup>4</sup> Until an industry solution is developed and implemented, no telemarketer using autodialers will be able to comply fully with the TCPA.

Once an industry solution is implemented, telemarketers will need time to update their databases and telemarketing lists to reflect such changes. Day-to-day updates of wireless numbers would be impractical, rendering immediate compliance with the TCPA infeasible. In this respect, updating internal databases and marketing lists to reflect wireless numbers is no different than updating internal telemarketing lists to reflect company-specific DNC requests. Accordingly, once an industry-approved database is established for wireless numbers, the Commission should allow telemarketers using autodialers at least 30 days to update their telemarketing lists to purge wireless numbers, without facing liability under the TCPA.

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<sup>3</sup> *Telemarketing Order* ¶¶ 69-170.

<sup>4</sup> Even where a carrier could develop processes to identify *its* wireline numbers ported to a wireless provider, it could not identify wireline numbers assigned to other carriers that are ported without reliance on a third party source.

*Five-year Time Limit for DNC Requests.* Robert Biggerstaff seeks clarification on the applicability of the five-year time limitation to company-specific do-not-call requests made prior to the effective date of the *Telemarketing Order*.<sup>5</sup> SBC agrees that clarification is needed here. A number of SBC customers requested DNC status prior to the effective date of the *Telemarketing Order*. It is not clear to SBC whether it should continue to honor these requests for 10 years or five years.

SBC believes it is reasonable to interpret the Commission's rules as only requiring telemarketers to honor company-specific DNC requests for five years from the date the request was made. SBC disagrees with Biggerstaff that this would be unfair to consumers or undermine consumer expectations. As the Commission concluded in the *Telemarketing Order*, a five-year period "reasonably balances any administrative burden imposed on consumers in requesting not to be called with the interests of telemarketers in contacting consumers."<sup>6</sup> This reasoning is equally applicable to DNC requests made prior to the effective date of the *Telemarketing Order*. Accordingly, the Commission should apply the 5-year limit uniformly.

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<sup>5</sup> Petition for Reconsideration of Robert Biggerstaff at 22.

<sup>6</sup> *Telemarketing Order*, ¶ 92.

For the foregoing reasons, SBC asks the Commission to take the actions as specified herein.

Respectfully Submitted,

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